

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
APPENDIX**





12-3  
74-2110

To be argued by  
SHEILA GINSBERG

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

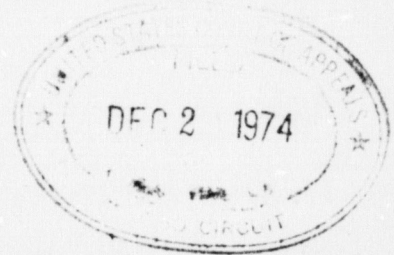
Appellee,

-against-

ADRIAN CUEVAS,

Appellant.

Docket No. 74-2110



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APPENDIX TO APPELLANT'S BRIEF

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ON APPEAL FROM A JUDGMENT  
OF THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

WILLIAM J. GALLAGHER, ESQ.,  
THE LEGAL AID SOCIETY,  
Attorney for Appellant  
FEDERAL DEFENDER SERVICES UNIT  
509 United States Court House  
Foley Square  
New York, New York 10007  
(212) 732-2971

SHEILA GINSBERG,  
Of Counsel

3

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ATTORNEYS

For U.S.: 735 035

7'S.

ADRIAN CUEVAS

For Defendant: *E. J. [illegible]*

Did false statements to Grand Jury while under oath, etc.

DATE	PROCEEDINGS
-10-73	Before Rosling J - Indictment filed and ordered sealed by the Court.
-11-73	Before Mishler, Ch J - Case called - Sealed indictment ordered opened by the Court.
1/16/73	Notice of Readiness for trial filed.
1/17/73	Petition for Writ of Habeas Corpus Ad Prosequendum filed. (Cuevas)
1/17/73	By ROSLING, J.- Writ issued ret. 1/26/73 .
1/26/73	Petition for Habeas Corpus Ad Prosequendum filed.
1/26/73	By ROSLING, J.- Writ issued ret. 2/2/73 . (Adrian Cuevas)
2/31/73	Writ ret'd and filed/Executed.
2/73	Before ROSLING, J.- Case called- Deft present without counsel- Court assigns JOEL WALTER of Legal Aid Society as counsel-Order assigning counsel signed-Copy of Order given to the atty-Deft arraigned and enters a plea of not guilty-Case marked ready.

DATE	PROCEEDINGS
1-2/73	By ROSLING, J.- Order appointing counsel filed.
1-23/73	Before ROSLING, J.- Case called- On application of AUSA Heinemann bail at \$20,000.00 cash or surety-Case marked ready and passed.
1-26/73	Bench Warrant ordered and issued.
1-25-7-73	Before Bartels J - Case called - counsel present - trial set down for July 2, 1973.
1-26-73	Petition for Writ of Habeas Corpus Ad Prosequendum filed.
1-26-73	By Bartels, J - Writ Issued. ret 7-2-73.
1-27-73	Writ retd and filed. Executed.
1-27-73	By SCHIFFMAN, MAG.- Order for Acceptance of Cash Bail filed. (A. CUEVA)
1-27-73	Before BARTELS, J.- Case called- Deft and counsel present-Set down for trial on 10/9/73
7-25-73	Magistrate's file 73 M 998 inserted into CR file.
10/3/73	Letter from Special A.U.S.A. Batchelder and Govt's Requests to Charge
1-28-74	Before BARTELS J - case called - deft & counsel present - Jurors selected and sworn - Trial ordered and BEGUN - Trial continued to Jan. 29, 1974
1-29-74	By BARTELS J - Order of Sustenance filed.
1-29-74	By Bartels J- Order of sustenance filed (coffee-12 jurors)
1-29-74	Before BARTELS J - case called - trial resumed - defts motion to dismiss etc. Denied - Court declares a Mistrial - Bail continued -status report set down for Feb. 13, 1974 at 9:30 am.
2-7-74	Stenographers transcript dated Jan. 29, 1974 filed.
2-14-74	Before BARTELS J - case called - defts motion to compel Govt to turn over Martinez medical records - denied - status report set down for Feb. 26, 1974 @ 9:45 am.
2-20-74	Voucher for Expert Services filed .
3-26-74	Before BARTELS,J.- Case called- Status report set down for 3-18-74 at
3-26-74	Before BARTELS,J.- Case called- Trial set down for 5-20-74 at 10:00 A.
5-20-74	Before BARTELS J - case called - deft & counsel John Gutman of Legal Aid present - defts motion to suppress argued - motion denied -Trial ordered and BEGUN - Jurors selected and sworn - Trial continued to May 21, 1974.
5-21-74	Before BARTELS J - case called - deft & counsel John Gutman present - Trial continued - defts motion for a determination that defts statements to the Grand Jury are not material - denied -Jury retires for deliberation at 3:40 PM -Jury returns with a verdict of guilty on counts 1, 2 & 3 - at 4:10 PM. sentence adjd without date - Jury polled and discharged - defts motion for Judgment of Acquittal - denied - Bail contd (\$5,000-10



## CRIMINAL DOCKET

DATE

PROCEEDINGS

1-22-74	Stenographers transcript filed dated Jan. 28, 1974 filed.
8-2-74	Before Bartels J -Case called - deft & counsel John Gutman of Legal Aid present - deft is sentenced to imprisonment for a period of 3 years on count 1, 3 years on count 2 and 3 years on count 3 to run concurrently pursuant to 18:3651; deft is to serve 6 months on count 1, 6 months on count 2 and 6 months on count 3 to run concurrently. Execution of remainder of sentence is suspended and deft is placed on probation for a period of 2 1/2 years to commence at the end of the period of incarceration. Deft to surrender on 8-9-74. Bail contd pending appeal. Clerk to file Notice of Appeal (no
8-2-74	Judgment & Commitment and Order of Probation filed - certified copies to Marshal and Probation.
8-2-74	Notice of Appeal filed without fee.
8-2-74	Docket entries and duplicate of Notice mailed to the C of A
10/23/74	Stenographers Transcript dated 8/2/74 filed
10/23/74	Govt's memorandum on request for judicial notice, etc., filed
10/23/74	Govt's memorandum of law on issue of use of prior conviction filed
10/23/74	Govt's memorandum as materiality of deft Cuevas's testimony filed
10/23/74	Govt's memoranudm of law on admissions into evidence, etc. filed
10/23/74	Govt's request to charge filed
10-23-74	Record on Appeal certified and handed to Bruce Cleveland, Legal Aid Society for delivery to the Court of Appeals.
10/25/74	Acknowledgment received from court of appeals for receipt of record on appeal
10/31/74	Stenographers Transcript dated 8/2/74 filed
11/22/74	Stenographers Transcripts dated 5/21/74(2) and 5/21/74 filed
11-22-74	Voucher for compensation of expert services filed (Ilene Ginsberg) deft Adrien CUEVAS.
11/25/74	Supplemental record on appeal handed to Joan Gill for delivery to court of appeals

A TRUE	
DATE	
11/25	19 74
BY	CLERK
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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

----- X  
UNITED STATES OF AMERICA

-against-

ADRIAN CUEVAS,

Defendant.  
----- X

THE GRAND JURY CHARGES:

Cr. No. \_\_\_\_\_  
(18 USC, §1623.)

FILED  
IN CLERK'S OFFICE  
U. S. DISTRICT COURT E.D. N.Y.

★ JAN 10 1973 ★

TIME A.M. \_\_\_\_\_  
P.M. \_\_\_\_\_

COUNT ONE

1. On or about the 19th day of December 1972, within the Eastern District of New York, the defendant ADRIAN CUEVAS, while under oath in a proceeding before a Grand Jury of the United States of America, duly impanelled and sworn in the United States District Court for the Eastern District of New York, unlawfully, willfully and knowingly did make a false material declaration.

2. At the time and place aforesaid, the Grand Jury was conducting an investigation to determine whether there had been committed in the Eastern District of New York and elsewhere violations of the laws of the United States, to wit: the Comprehensive Drug Abuse Prevention and Control Act of 1970, Title 21 United States Code, Sections 801 -966 and other laws.

3. During the aforesaid proceeding, it was a material matter for the Grand Jury to determine, among other things, whether the defendant ADRIAN CUEVAS ever negotiated for the sale of cocaine in 1972.

4. At the time and place aforesaid, the defendant ADRIAN CUEVAS appeared as a witness before the Grand Jury and then and there, while under oath, made false material declarations with regard to the aforesaid material matters as follows:

Q Now, in February of this year, did you  
ever meet with anybody in the LaColina



Bar and have any negotiations concerning the sale of cocaine?

B  
A No.

Q Now, on February 24th the late evening of that day of 1972, did you ever have any discussions with anybody at which time you stated that the cocaine you had at that time was not very good and it wouldn't take a half cut but that you would sell it anyways?

Did you tell that to anybody?

A No.

Q Did you have any negotiations or discussions at all?

A No.

Q In February of 1972 concerning --

A That particular person that I don't know, you know. He came over to purchase cocaine from me. I told him I don't sell cocaine.

Q You told him you don't sell cocaine?

A Yes.

Q Did you ever in February of this year state to anyone in February 24th to be exact, in the LaColina that you would sell them cocaine at \$500 an ounce?

A No.

Q Did you ever tell someone on February 25th or 24th of 1972 in the LaColina Bar on the evening of that night that he should come around and talk to you if you wanted to get some good cocaine in about a week's time?

A No. I didn't say that.

. . . . .

Q Let me ask you. I will take you back again to February. February 24, 1972, did you ever say to anybody on that evening that you could supply all the cocaine this individual wanted but that the cocaine you had at that time was not very good and it would only take a half cut?

A I did not say a thing like that.

Q Did you ever say to anybody on the evening of February 24th that the price of the bad cocaine was the same as the price of the good cocaine?

A I did not.

Q Are you sure of that?

A Sure.

5. The aforesaid testimony of the defendant ADRIAN CUEVAS, as he then and there well knew and believed, was not true in that in fact on or about the 24th day of February 1972, the defendant ADRIAN CUEVAS did negotiate with an undercover officer of the New York Joint Task Force concerning the sale of cocaine, at which time the defendant ADRIAN CUEVAS said in substance to the undercover officer, among other things, that he (the defendant, ADRIAN CUEVAS) could supply all the cocaine the undercover officer wanted and that the price would be \$500 an ounce. (Title 18 United States Code, 1623.)

COUNT TWO

1. On or about the 19th day of December 1972, within the Eastern District of New York, the defendant ADRIAN CUEVAS, while under oath in a proceeding before a Grand Jury of the United States of America, duly impanelled and sworn in the United States District Court for the Eastern District of New York,



unlawfully, willfully and knowingly did make a false material declaration.

2. At the time and place aforesaid, the Grand Jury was conducting an investigation to determine whether there had been committed in the Eastern District of New York and elsewhere violations of the laws of the United States, to wit: the Comprehensive Drug Abuse Prevention and Control Act of 1970, Title 21 United States Code, Sections 801 - 966 and other laws.

3. During the aforesaid proceeding, it was a material matter for the Grand Jury to determine, among other things, whether the defendant ADRIAN CUEVAS ever negotiated for the sale of cocaine in 1972.

4. At the time and place aforesaid, the defendant ADRIAN CUEVAS appeared as a witness before the Grand Jury and then and there, while under oath, made false material declarations with regard to the aforesaid material matters as follows:

Q Did you ever say to anybody in March of this year on March 22, 1972 that you would sell them or could get an eighth of a kilo of cocaine for \$2000?

A No, I didn't.

Q Did you ever bargain with anybody about the price of the eighth of a kilo of cocaine from \$2,000 to \$1,800 on March --

A I didn't bargain with anybody.

. . . . .

Q Now, in March 22nd of this year, in the LaColina, in the early evening of that day, about 6:15, did you ever say to anybody that the price of an eighth of a kilo of cocaine which would take a three cut would be \$2,000? Did you ever

say that?

A I did not.

. . . . .

Q Did you ever give anybody on the evening of March 22nd a slip of white paper with the number of the bar on it and tell him to call back and you would see whether you could get the eighth of a kilo?

A No.

5. The aforesaid testimony of the defendant ADRIAN CUEVAS, as he then and there well knew and believed, was not true in that in fact the defendant ADRIAN CUEVAS on March 22, 1972 had negotiations with an undercover officer of the New York Joint Task Force for the sale of cocaine, at which time the defendant ADRIAN CUEVAS said, in substance, among other things, that he had good cocaine and that an eighth of a kilogram of cocaine would cost \$2,000. (Title 18 United States Code, §1623.)

COUNT THREE

1. On or about the 19th day of December 1972, within the Eastern District of New York, the defendant ADRIAN CUEVAS, while under oath in a proceeding before a Grand Jury of the United States of America, duly impanelled and sworn in the United States District Court for the Eastern District of New York, unlawfully, willfully and knowingly did make a false material declaration.

2. At the time and place aforesaid, the Grand Jury was conducting an investigation to determine whether there had been committed in the Eastern District of New York and elsewhere violations of the laws of the United States, to wit: the Comprehensive Drug Abuse Prevention and Control Act of 1970, Title 21 United States Code, Sections 801 - 966 and other laws.

3. During the aforesaid proceeding, it was a material matter for the Grand Jury to determine, among other things,



whether the defendant ADRIAN CUEVAS ever gave a sample of cocaine to anyone in 1972.

4. At the time and place above, the defendant ADRIAN CUEVAS appeared as a witness before the Grand Jury and then and there, while under oath, made false material declarations with regard to the aforesaid material matters as follows:

Q Did you ever give anybody any cocaine in the mens room of the LaColina Bar on the the evening of March 22, 1972?

A I never deal with cocaine in my life so I don't deal with cocaine.

Q So you don't deal with cocaine?

A No.

Q You never negotiated with anybody for the sale of cocaine in March of this year?

A No.

Q You are sure you never gave anybody a sample of cocaine in a folded one dollar bill in the mens room of the LaColina?

A No.

Q Did you ever say to anybody on the evening of March 22, 1972 that for \$1,800 they could have an eighth of a kilo of flake cocaine?

A No.

Q Did you ever --

A It was one guy one time he came to me. He asked me if I sell cocaine. I told him no. You know, at that time, you know.

Q Did you ever?

A That's what I told him.

Q Did you ever negotiate with anybody for the sale of rock cocaine on March --

A I don't even know what that is, rock.

Q You have no idea what rock cocaine is?

A No.

Q Can you tell me what the number  
993-9763 is?

A 993?

Q Yes, 9763.

A 9993?

Q 993-9763. Is that the telephone number  
at the LaColina?

A Yes, LaColina telephone. Yes.

Q Now, is it your testimony that you never  
dealt with cocaine in any way or that  
you never handed anybody any cocaine, is  
that right?

A No.

. . . . .

Q Did you ever on the evening of March 22,  
1972 go into the mens room of the LaColina  
and give somebody any cocaine in a dollar  
bill?

A No.

. . . . .

Q Is it your testimony that you have never  
given anybody even a small amount of cocaine?

A No.

Q Is it your testimony that you never gave  
to anybody on the evening of March 22, 1972  
a small amount of cocaine wrapped in a





dollar bill?

A No.

5. The aforesaid testimony of the defendant ADRIAN CUEVAS, as he then and there well knew and believed, was not true in that in fact on or about the 22nd day of March 1972 in the LaColina Bar, the defendant ADRIAN CUEVAS gave a sample of cocaine to an undercover officer of the New York Joint Task Force.  
(Title 18 United States Code, §1623.)

A TRUE BILL.

Robert A. Mours  
UNITED STATES ATTORNEY

William Cole  
FOREMAN.

[Signature]



No. \_\_\_\_\_

**UNITED STATES** \_\_\_\_\_ **DISTRICT COURT**

**EASTERN** \_\_\_\_\_ *District of* \_\_\_\_\_ **NEW YORK**

\_\_\_\_\_ *Division*

**THE UNITED STATES OF AMERICA**

*vs.*

\_\_\_\_\_ **ADRIAN CUEVAS,**

\_\_\_\_\_ *Defendant.*

**INDICTMENT**

(T. 18, U.S.C., §1623)

\_\_\_\_\_ *A true bill,*

\_\_\_\_\_ *Foreman.*

\_\_\_\_\_ *Filed in open court this* \_\_\_\_\_ *day*  
*of* \_\_\_\_\_, *A. D. 19* \_\_\_\_\_

\_\_\_\_\_ *Clerk.*

*Ball, §* \_\_\_\_\_

\_\_\_\_\_ GPO 902-487

Guy L. Heinemann  
Assistant U.S. Attorney

## Charge

1 Charge  
2 THE COURT: Ladies and gentlemen, you have  
3 listened most attentively to the testimony and to the  
4 summations. The testimony presented the facts through  
5 witnesses. The summations presented the arguments of  
6 the attorneys, pro and con, concerning those facts.  
7 The time has come for you and me to perform our  
8 respective functions in the trial of this case.

9 You have been very patient. You have heard the  
10 voices of the attorneys and the Court and now your  
11 voice will be heard.

12 At the beginning, I wish to extend to you my  
13 deep appreciation for your attentiveness and your  
14 alertness during the course of this trial, and particu-  
15 larly, to express my gratitude for the sacrifice each  
16 and every one of you has made in neglecting your  
17 business and your personal affairs to see that the  
18 ends of justice might be accomplished. You have been  
19 more tolerant of the unavoidable delays and exceedingly  
20 interested in your task.

21 Every criminal prosecution is important to the  
22 Government of the United States, and it is equally  
23 important to the defendants on trial. Each is entitled  
24 to equal justice at your hands.

25 From my experience, justice is best dispensed



1  
2 in a calm, patient, careful and deliberate manner,  
3 and I sincerely request you to keep that attitude  
4 throughout your deliberations when you go into your  
5 jury room.

6 Of course, you should always respect the view-  
7 point of your fellow jurors. You should talk to each  
8 other with consideration and intelligence, and decide  
9 the issues in this case on the merits and on the merits  
10 alone.

11 You have heard the evidence and the arguments  
12 of counsel, and it now becomes my duty to give you the  
13 law governing this case. It is your duty to accept  
14 the law as it is given to you by the Court and to  
15 determine the facts of the case for yourselves.

16 The proper application of the law of the case  
17 to the facts of the case, as you find them, determines  
18 your verdict.

19 I wish to make it very plain to you that the  
20 sole responsibility and the sole power in determining  
21 the facts are with you, and anything that I may say or  
22 seem to say, as indicating any view or opinion as to  
23 the facts is to be ignored by you.

24 In determining the facts, you should not be  
25 influenced by any rulings that the Court may have  
made during the trial.

1  
2  
3 Those rulings dealt with matters of law and  
4 not questions of fact.

5 The Court's rulings on objections made by any  
6 of the attorneys, and any questions which the Court  
7 posed to any witness, are not to be considered by you  
8 as indicating either the guilt or innocence of the  
9 defendant. The same is true with respect to any  
10 inflection of the Court's voice relative to any such  
11 matters, or in connection with any comments or  
12 statements the Court may have made to any of the  
13 attorneys.

14 The Court expresses no opinion as to the guilt  
15 or innocence of the defendants. The determination of  
16 such guilt or innocence is a matter that rests exclusively  
17 with you. There are some general principles of law  
18 which are important in every criminal case, and I wish,  
19 first, to make some statements which apply to criminal  
20 cases in general;

21 After which, I shall endeavour to make clear  
22 to you the particular case involved.

23 It is an established principle that an indictment  
24 is but a formal method of accusing a defendant of a  
25 crime. It is not evidence of anykind against the  
accused, and does not create any presumption or permit



1  
2 any inference of guilt against any of these defendants.

3 It is also a principle well-recognized in law,  
4 that every person who is charged with the commission  
5 of a crime is presumed to be innocent, and the burden  
6 rests on the Government to prove to your satisfaction  
7 beyond a reasonable doubt, every element of the crime  
8 and that the party is guilty as charged.

9 This presumption of innocence remains with the  
10 defendant all through the case until, if ever, it is  
11 overborne by proof which satisfied you beyond any  
12 reasonable doubt that the presumption of innocence  
13 no longer remains with them.

14 Thus, you look at the evidence, all the evidence  
15 introduced in this case, and ask yourselves whether or  
16 not you are satisfied beyond a reasonable doubt that  
17 the offenses have been committed as charged in the  
18 indictment.

19 If you are so satisfied, then it will be your  
20 plain duty to convict the defendant. But if there  
21 exists in your minds a reasonable doubt of the defendant's  
22 guilt, you must give him the benefit of that doubt,  
23 and acquit him.

24 If there are two reasonable conclusions equally  
25 supported by the evidence, one of which is consistent

1  
2 with the defendant's guilt and the other consistent  
3 with his innocence, then you must adopt that conclusion  
4 consistent with his innocence and acquit him.

5 The question of reasonable doubt is one which  
6 can be determined only by you. It cannot be determined  
7 by argument or opinion of counsel.

8 In reaching a conclusion with respect to  
9 reasonable doubt, you must consider all of the evidence  
10 together, not just a particular segment or portion of  
11 the evidence, isolated from the rest of the evidence.

12 The term "reasonable doubt" as used in this  
13 charge, does not mean just any reasonable doubt you  
14 might have, but it means such reasonable doubt as a  
15 careful, prudent and reasonable man or woman ought  
16 to entertain in the circumstances proved.

17 It means a doubt based on reason, and which is  
18 reasonable in view of all of the evidence. The key  
19 word is "reasonable". A reasonable doubt may arise  
20 from the evidence produced, or from the lack of  
21 evidence in the case.

22 It is the obligation of the government to prove  
23 a defendant guilty beyond a reasonable doubt, but it  
24 is not required to prove a defendant guilty beyond a  
25 shadow of a doubt.



1  
2  
3 It is rarely possible to prove anything to an  
4 absolute certainty, or beyond a possible doubt. Seldom  
5 can one prove a controversial fact with mathematical  
6 certainty. A reasonable doubt does not mean a vain,  
7 fancy, vague or whimsical or imaginary doubt, nor  
8 does it mean a possible doubt created by a reluctance  
9 on the part of the jury to perform an unpleasant task.

10 It means a doubt arising out of the evidence  
11 or lack of evidence which is a reasonable doubt. A  
12 reasonable doubt is a doubt that would cause prudent  
13 men to hesitate to act in matters important to them-  
14 selves.

15 If after a fair and impartial consideration of  
16 all of the evidence or lack of evidence, you have a  
17 reasonable doubt as to the defendant's guilt, then it  
18 is your duty to acquit him.

19 On the other hand, if after a fair and impartial  
20 consideration of all of the evidence, you believe that  
21 you have no doubt that is reasonable as to the  
22 defendant's guilt, then it is your duty to convict him.

23 One is said to be convinced in a case of this  
24 kind beyond a reasonable doubt, when, after an impartial  
25 comparison, and consideration of all of the evidence,  
one can conscientiously say that he is convinced to a

1  
2 moral certainty of the truth of the charge.

3 The machinery of a trial calls for the exercise  
4 of varying functions by counsel, by the witnesses who  
5 testify, by the Court that presides, and by the jury.  
6 You, as the jury, exercise the fact-finding function.

7 As you have been told, you are the sole judges  
8 of the facts. That is to say, it is you who must  
9 consider the evidence, weigh the evidence, and draw  
10 inferences from the evidence, but only from the  
11 evidence.

12 You must distinguish between the mere arguments  
13 of counsel which have been made before you and the  
14 evidence upon which those arguments rest.

15 The repetition of an argument, however often,  
16 does not constitute evidence. You must carefully  
17 analyze the assertions which have been made to you by  
18 counsel for the defendant and counsel for the government  
19 and ascertain what basis those assertions have in the  
20 evidence.

21 Now, this brings us directly to the charges in  
22 the indictment, which I think I read to you in the  
23 beginning of the trial, and I will read this indictment  
24 to you again.

25 Count one refers, as you recall, the discussion  
held in February of 1972, and count two refers to the



1  
2 discussion held in March 22, 1972; all of this  
3 testimony, however, was given by the Defendant in  
4 December of 1972, before the Grand Jury, and the counts  
5 read as follows:  
6

7 Count one, on or about the 19th day of December,  
8 1972, within the Eastern District of New York, the  
9 defendant, Adrian Cuevas, while under oath in a proceed-  
10 ing before a Grand Jury of the United States of America,  
11 duly empanelled and sworn in the United States District  
12 Court for the Eastern District of New York, unlawfully,  
13 wilfully, and knowingly, did make a false material  
14 declaration.

15 Two. At the time and place aforesaid, the  
16 Grand Jury was conducting an investigation to determine  
17 whether there had been committed in the Eastern District  
18 of New York and elsewhere, violations of the laws of  
19 the United States, to wit: The Comprehensive Drug  
20 Abuse Prevention and Control Act of 1970, Title 21,  
21 United States Code, the Section 801-966 and other laws.

22 Three. During the aforesaid proceeding, it was  
23 a material matter for the Grand Jury to determine,  
24 among other things, whether the defendant Adrian Cuevas,  
25 ever negotiated for the sale of cocaine in 1972.

Four. At the time and place aforesaid, the

1  
2 defendant, Adrian Cuevas appeared as a witness before  
3 the Grand Jury, and then and there, while under oath,  
4 made false material declarations with regard to the  
5 aforesaid material matters, as follows:

6 Ten. Question Now, in February of this  
7 year, did you ever meet with anybody at the La Calina  
8 Bar and have any negotiations concerning the sale of  
9 cocaine?

10 Answer No.

11 Question Now, on February 24, the late evening  
12 of that day, of 1972, did you ever have any discussion  
13 with anybody, at which time you stated, that the cocaine  
14 you had at that time was -not very good and it wouldn't  
15 take a half cut, but that you would sell it anyways?

16 Did you tell that to anybody?

17 Answer No.

18 Question Did you have any negotiations or  
19 discussions at all?

20 Answer No.

21 Question In February of 1972, concerning --

22 Answer That particular person that I don't  
23 know, you know. He came over to purchase cocaine from  
24 me. I told him I don't sell cocaine.

25 Question You told him you don't sell cocaine?



1  
2 Answer Yes.

3 Question Did you ever in February of this year  
4 state to anyone in February 24, to be exact, in the  
5 La Calina that you would sell them cocaine at five  
6 hundred dollars an ounce?

7 Answer No.

8 Question Did you ever tell anyone on February  
9 25 or 24 of 1972, in the La Calina Bar on the evening  
10 of that night, that he should come around and talk  
11 to you if you wanted to get some good cocaine in about  
12 a week's time?

13 Answer No. I didn't say that.

14 Question Let me ask you. I will take you back  
15 again to February. February 24, 1972, did you ever  
16 say to anybody on that evening that you could supply  
17 all the cocaine that this individual wanted, but that  
18 the cocaine you had at that time was not very good and  
19 it would only take a half cut?

20 Answer I did not say a thing like that.

21 Question Did you ever say to anybody on the  
22 evening of February 24 that the price of the bad  
23 cocaine was the price -- was the same as the price of  
24 the good cocaine?

25 Answer I did not.

1  
2 Question Are you sure of that?

3 Answer Sure.

4 Five. The aforesaid testimony of the defendant  
5 Adrian Cuevas, as he then and there well knew and  
6 believed, was not true, in that in fact, on or about  
7 the 24th day of February, 1972, the defendant, Adrian  
8 Cuevas did negotiate with an undercover officer of  
9 the New York Joint Task Force, concerning the sale of  
10 cocaine, at which time, the defendant Adrian Cuevas  
11 said in substance to the undercover officer, among  
12 other things, that he (the defendant Adrian Cuevas)  
13 could supply all the cocaine the undercover officer  
14 wanted, and that the price would be five hundred dollars  
15 an ounce. (Title 18, United States Code 1623.)

16 Count two. 1. On or about the nineteenth  
17 day of December, 1972, within the Eastern District of  
18 New York, the defendant Adrian Cuevas, while under oath  
19 in a proceeding before a Grand Jury of the United States  
20 of America, duly empanelled and sworn in the United  
21 States District Court for the Eastern District of New  
22 York unlawfully, wilfully and knowingly did make a  
23 false material declaration.

24 2. At the time and place aforesaid, the Grand  
25 Jury was conducting an investigation to determine whether



1  
2 there had been committed in the Eastern District of  
3 New York and elsewhere violations of the laws of the  
4 United States, to wit:

5 The comprehensive drug abuse and prevention and  
6 control act of 1970, Title 21, United States Code,  
7 Section 801-966 and other laws.

8 3. During the aforesaid proceeding, it was a  
9 material matter for the Grand Jury to determine, among  
10 other things, whether the defendant Adrian Cuevas ever  
11 negotiated for the sale of cocaine in 1972.

12 4. At the time and place aforesaid, the  
13 defendant Adrian Cuevas appeared as a witness before  
14 the Grand Jury, and then and there, while under oath,  
15 made false material declarations with regard to the  
16 aforesaid material matters, as follows:

17 10. Question Did you ever say to anybody in  
18 March of this year, or on March 22, 1972, that you would  
19 sell them or could get an eighth of a kilo of cocaine  
20 for two thousand dollars?

21 Answer No, I didn't.

22 Question Did you ever bargain with anybody about  
23 the price of the eighth of a kilo of cocaine from  
24 two thousand to one thousand eight hundred dollars on  
25 March ---

1  
2                   Answer    I didn't bargain with anybody.

3                   Question   Now on March 22 of this year, in  
4                   the La Calina, in the early evening of that day, about  
5                   six fifteen, did you ever say to anybody that the price  
6                   of an eighth of a kilo of cocaine which would take a  
7                   three cut, would be two thousand dollars? Did you ever  
8                   say that?

9                   Answer    I did not.

10                  Question   Did you ever give anybody on the  
11                  evening of March 22, a slip of white paper with the  
12                  number of the bar on it, and tell him to call back and  
13                  you would see whether you could get the eighth of a  
14                  kilo?

15                  Answer    No.

16                  5. The aforesaid testimony of the defendant  
17                  Adrian Cuevas, as he then and there well knew and  
18                  believed, was not true, in that in fact the defendant  
19                  Adrian Cuevas, on March 22, 1972, had negotiations with  
20                  an undercover officer of the New York Joint Task Force  
21                  for the sale of cocaine, at which time the defendant  
22                  Adrian Cuevas, said, in substance, among other things,  
23                  that he had good cocaine and that an eighth of a kilo  
24                  of cocaine would cost two thousand dollars. (Title 18  
25                  United States Code, Section 1623.)



## Count 3.

1. On or about the 19th day of December, 1972, within the Eastern District of New York, the defendant Adrian Cuevas, while under oath in a proceeding before the Grand Jury of the United States of America, duly empanelled and sworn in the United States District Court for the Eastern District of New York, unlawfully wilfully and knowingly did make a false material declaration.

2. At the time and place aforesaid, the Grand Jury was conducting an investigation to determine whether there had been committed in the Eastern District of New York and elsewhere, violations of the laws of the United States, to wit: The Comprehensive Drug Abuse Prevention and Control Act of 1970, Title 21, United States Code, Sections 801-966 and other laws.

3. During the aforesaid proceeding it was a material matter for the Grand Jury to determine, among other things, whether the defendant Adrian Cuevas ever gave a sample of cocaine to anyone in 1972.

4. At the time and place aforesaid, the defendant Adrian Cuevas appeared as a witness before the Grand Jury and then and there, while under oath, made false material declarations with regard to the aforesaid

1  
2 material matters as follows:

3 10. Question Did you ever give anybody any  
4 cocaine in the men's room of the La Calina bar on  
5 the evening of March 22, 1972?

6 Answer I never deal with cocaine in my life,  
7 so I don't deal with cocaine.

8 Question So you don't deal with cocaine?

9 Answer No.

10 Question So you never negotiated with anybody  
11 for the sale of cocaine in March of this year?

12 Answer No.

13 Question You are sure you never gave anybody  
14 a sample of cocaine in a folded one dollar bill in the  
15 men's room of the La Colina?

16 Answer; No.

17 Question Did you ever say to anybody on the  
18 evening of March 22, 1972, that for one thousand eight  
19 hundred dollars, they could have an eighth of a kilo  
20 of flake cocaine?

21 Answer No.

22 Question Did you ever --

23 Answer It was one guy, one time he came to me.  
24 He asked me if I sell cocaine. I told him no. You know  
25 at that time, you know.



1

Question Did you ever?

2

Answer That's what I told him.

3

4

Question Did you ever negotiate with anybody  
for the sale of rock cocaine on March --

5

6

Answer I don't even know that that is, rock.

7

Question You have no idea what rock cocaine  
is?

8

9

Answer No.

10

Question Can you tell me what the number 993-  
9763 is?

11

12

Answer 993?

13

Question Yes, 9763?

14

Answer 993?

15

Question 993-9763? Is that the telephone number  
at the La Colina?

16

17

Answer Yes, La Colina telephone yes.

18

Question Now, is it your testimony that you  
never dealt with cocaine in any way or that you never  
handed anybody any cocaine; is that right?

19

20

21

Answer No.

22

Question Did you ever on the evening of  
March 22, 1972, go into the men's room of the La Colina  
and give somebody any cocaine in a dollar bill?

23

24

25

Answer No.

1  
2 Question Is it your testimony that you have  
3 never given anybody even a small amount of cocaine?  
4

5 Answer No.

6 Question Is it your testimony that you never  
7 gave to anybody on the evening of March 22, 1972,  
8 a small amount of cocaine wrapped in a dollar bill?

9 Answer No.

10 5. The aforesaid testimony of the defendant  
11 Adrian Cuevas, as he then and there well knew and  
12 believed was not true in that in fact on or about  
13 the 22nd day of March, 1972, in the La Colina Bar,  
14 the defendant Adrian Cuevas gave a sample of cocaine  
15 to an undercover officer of the New York Joint Task  
16 Force. (Title 18, United States Code, Section 1623.)

17 Now, let me read to you just the pertinent  
18 portion of 1623 of Title 18 of the United States Code,  
19 claimed to have been violated in the three counts of  
20 this indictment.

21 It reads as follows, and it's a very short  
22 Section, Section 1623: "False declarations before  
23 a Grand Jury.

24 "(a) Whoever under oath in any proceeding  
25 before or ancillary to any Court or Grand Jury



1  
2 of the United States, knowingly makes any  
3 fals material declaration, shall be  
4 punished."

5 Now, the onus of the offense as appears from  
6 this Section and from these counts, are (1) False,  
7 material statements made by the defendant under oath  
8 before the Grand Jury, and (2) The false statements  
9 were wilfully and knowingly made by the defendant under  
10 oath.

11 The Court has ruled that the statements made  
12 by the defendant before the Grand Jury were material.  
13 However, it is for you to determine whether they were  
14 false and made with knowledge that they were false.

15 Therefore, you must find beyond a reasonable  
16 doubt that (1) The statements were made under oath  
17 before the Grand Jury and (2) That they were false,  
18 and that the defendant intentionally made them and  
19 knew, that at the time he made them, they were false.

20 Failure of the Government to prove both of the  
21 elements of the offense is fatal to the prosecution  
22 and entitles the defendant to a verdict of acquittal.

23 Knowledge and intent is a very difficult matter  
24 to describe. We cannot physically look into one's mind  
25 and ascertain what knowledge or intent he had.

1  
2 "Knowledge," as well as "intent" is descriptive  
3 of a state of mind, and as an element of the offense,  
4 is seldom, if ever, susceptible of direct proof.

5 The proof of this element of knowledge and  
6 intent may rest, as it frequently does, on evidence  
7 of facts and circumstances, from which it clearly appears  
8 as the only reasonable and logical inference that the  
9 defendant knew that he was making a false, material  
10 statement under oath before the Grand Jury.

11 But in determining knowledge and intent, you  
12 may consider his intelligence or sophistication or  
13 lack of intelligence and sophistication.

14 No person can intentionally avoid knowledge  
15 by closing his eyes to the fact that would lead a  
16 reasonable man to investigate.

17 Knowledge and intent may be inferred from the  
18 acts of the party, and is a question of fact to be  
19 determined from all the circumstances and the jury  
20 may scrutinize the defendant's entire conduct at the  
21 time the offenses alleged were committed.

22 The circumstantial evidence sufficient to  
23 support a charge of knowledge and intent must be  
24 sufficiently persuasive, however, as to exclude the  
25 inference of innocence under the circumstances.



1  
2 In this case, you must decide whether the  
3 evidence shows beyond a reasonable doubt that the  
4 defendant Adrian Cuevas knew he was making a false  
5 statement before the Grand Jury.

6 Now, if at the time, the defendant gave testimony  
7 before the Grand Jury, he was aware of the fact that  
8 he was making a false statement, and if he knew that  
9 his statement was false at the time he made it, then  
10 he was acting knowingly and wilfully as these terms  
11 are used in the statutes governing the crimes of false  
12 declarations.

13 Now, this was a very short case, and I will not  
14 attempt to marshal the testimony or the evidence or  
15 summarize it.

16 I will simply state what witnesses took the stand  
17 and you will remember the evidence as well as I.

18 Of course, the Government offered evidence that  
19 the defendant testified under oath before the Grand  
20 Jury and that the statements set forth in the indictment  
21 represented the testimony given by the defendant before  
22 the Grand Jury.

23 At the time the defendant testified, he was given  
24 immunity. Immunity is simply a word to describe a  
25 procedure whereby the Government grants to a witness

1  
2 freedom from prosecution for the transaction with  
3 respect to which he testified.

4 If after having received immunity, such a  
5 witness testifies falsely, then he may be prosecuted  
6 for perjury.

7 I am not going to summarize the evidence, because  
8 the case is too short, and the evidence should be fresh  
9 in your minds.

10 On behalf of the Government, the following  
11 took the witness stand:

12 Lillian Cole, forelady of the June 1972  
13 Grand Jury.

14 Elizabeth Ng, Grand Jury stenographic reporter;  
15 Charles Martinez, a New York City Policeman;  
16 Raymond Vallely, a New York City Detective;  
17 James Harris, Special agent of the Drug Enforce-  
18 ment Administration.

19 Philip Porto, Laboratory Director and United  
20 States Chemist;

21 Michael Elliott, A New York State Policeman;  
22 Jack Fassanello, a Government chemist.

23 We all recollect what they testified to, that  
24 will govern this case.

25 You must understand the Court has not expressed



1  
2 directly or indirectly or by inclination or gesture,  
3 any opinion concerning any of the facts of this case.

4 This is not a narcotics case. The issue for  
5 the jury is a simple one. Did the defendant Adrian  
6 Cuevas knowingly and wilfully make a false statement  
7 under oath before the Grand Jury as set forth in the  
8 indictment. There is no other issue involved.

9 The defendant Adrian Cuevas pleaded not guilty  
10 and denied that he knowingly and wilfully made any  
11 false material statements or declarations before the  
12 Grand Jury.

13 The defendant in this case did not take the  
14 witness stand. The law does not compel a defendant  
15 to take the witness stand and testify; and no presump-  
16 tion of guilt may be raised, and no inference of any  
17 kind may be drawn from the failure of the defendant  
18 to testify, nor should this fact enter into your  
19 discussions or deliberations in any manner whatsoever.

20 I have made this brief statement for the sole  
21 purpose of giving you some idea of your opposing  
22 contentions of both of these parties. In doing so,  
23 if I have incorrectly referred to any testimony or  
24 any fact, please disregard any such misstatement or  
25 error.

1  
2 If the attorneys or either of them has misstated  
3 the testimony, disregard such misstatements. Again,  
4 I advise you that it will be your recollection of the  
5 testimony that will control in your deliberations.

6 We come to a rather important question now,  
7 which is present in all trials and that is credibility  
8 of the witnesses.

9 You saw the witnesses, you heard them, and in  
10 considering the evidence, you exercise the exclusive  
11 function passing upon the credibility of these witnesses.

12 You could see this is a very important function  
13 to determine where the truth lies. You must of  
14 necessity decide who is telling the truth. How you  
15 are to do this is left to your own determination.

16 Among other things, in determining the credibili-  
17 ty of a witness, the jury may consider his motive  
18 in testifying, his manner and demeanour on the witness  
19 stand, his interest, prejudice or bias, if any, whether  
20 he has a purpose or interest to serve, which might  
21 color his testimony.

22 Interest does not necessarily mean that a  
23 witness is untruthful. It is merely an element that  
24 you may consider, in reaching your determination upon  
25 the question of whether he is telling the truth.



1  
2           You consider the witnesses' demeanour, to  
3 use a colloquial expression, you size him up when he  
4 tells you anything, and you decide whether he or  
5 she strikes you as a fair and candid witness, or  
6 whether he or she strikes you as a person who is  
7 not telling the truth either intentionally or uninten-  
8 tionally.

9           You may also consider whether a witness had  
10 the means of knowing what he was testifying to, and  
11 also the inherent probability or improbability of  
12 his testimony, the consistency or inconsistency of  
13 his statements, and the reasonableness or unreasonableness  
14 of his testimony, viewed in the light of all of the  
15 circumstances surrounding that testimony.

16          Another consideration is whether or not the  
17 witness has been contradicted by other credible evidence  
18 and whether or not he has made a statement at other  
19 times and places, under oath, or otherwise, which  
20 contradicted or are contrary to those made by him on  
21 the witness stand.

22          As to the latter, you should consider whether  
23 any prior inconsistent or contradictory statements  
24 conflict with the testimony given by the witness with  
25 respect to material or immaterial matters, and to what

1  
2 extent, if any, they should be considered to effect  
3 the witness' credibility.

4 Of course, it's important that you decide when  
5 you review a witness' testimony, whether any incon-  
6 sistency in his testimony relates to a minor, immaterial  
7 matter, which is something which is really material.  
8 That could be very important in reaching a verdict.

9 The jury has a right in appraising a particular  
10 witness' credibility, as to all or part of his testimony,  
11 consider the probability or improbability of that  
12 testimony when viewed in the light of all of the cir-  
13 cumstances and other evidence in the case.

14 Now, we don't have any opinion evidence in this  
15 case, so it will be up to you finally, to determine  
16 whether the witness, whoever he may be, is telling the  
17 truth as to all the facts or only with respect to some  
18 of these facts.

19 The test as to whether you believe a witness  
20 is the same test which you apply in your everyday  
21 business or in your home affairs, where you are called  
22 to make a similar determination.

23 Do not think, members of the jury that when  
24 you came into this jury box and were sworn as jurors,  
25 that it was supposed that you would lay aside your  
business or everyday experience.



1  
2 That is not so. You are now being called upon,  
3 indeed, to use that business or everyday experience,  
4 to assist you in determining any conflict in evidence  
5 in this case.

6 You are the exclusive judges in determining;  
7 where the truth lies.

8 Now, you have been chosen and sworn as jurors  
9 in this case, to try the issues of fact presented by  
10 the allegations of the indictment, and the denial made  
11 by the "not guilty" plea of the defendant accused.

12 You are to perform this duty without fear and  
13 without bias or prejudice as to any party. The law  
14 does not permit jurors to be governed by fear, sympathy,  
15 prejudice or public opinion.

16 You must not permit any plea of sympathy to  
17 enter your verdict. The accused and the public expect  
18 you will carefully and impartially consider all the  
19 evidence, follow the law as stated by the Court and  
20 reach a just verdict, regardless of the consequences.

21 In conclusion, let me say that it is your duty  
22 to weigh the evidence carefully, dispassionately,  
23 calmly, and to reach a conclusion about the case as  
24 to the facts which are wholly within your finding.

25 The only question for your consideration is

1  
2 whether the defendant is guilty or innocent of the  
3 offense for which he is on trial. If you are  
4 satisfied beyond a reasonable doubt that he is guilty,  
5 it is your plain duty to convict him.

6 If you have a reasonable doubt about the matter,  
7 it is equally your duty to acquit him.

8 The punishment provided by law is a matter  
9 exclusively within the province of the Court; you  
10 cannot and you should not allow consideration of any  
11 punishment which may be imposed on the defendant, to  
12 influence you in arriving at an impartial verdict  
13 as to the guilt or innocence of the defendant.

14 It is for the Court to determine any mitigating  
15 or any other special circumstances which may require  
16 consideration in the case, so you should not be  
17 concerned with the question of punishment.

18 Now, ladies and gentlemen, all twelve of you  
19 must agree whichever way you find. In other words,  
20 your verdict must be unanimous. You must take each  
21 count of the indictment separately. As you know, there  
22 are three counts here, and you must determine the  
23 guilt or innocence of this defendant with respect to  
24 each count.

25 Now, the form of your verdict should be:



1  
2 "We, the jury, find the defendant  
3 innocent on count one, or we acquit the defendant  
4 on count one;" or you can say: "We the jury  
5 find the defendant guilty on count one" as the  
6 case may be and you take each count, all three  
7 counts and repeat this procedure and return a verdict  
8 of guilty or not guilty on each count with respect  
9 to this defendant.

10 Now, if you wish any testimony of any witness  
11 to be read to you, or if you have any further questions,  
12 please send a note to the marshal, who will relay your  
13 request to me.

14 Jury service is not always pleasant, and it is  
15 rarely convenient. Jury service is one of the keystones  
16 of our system of American justice and democratic  
17 government. I want to thank each and every one of  
18 you for your outstanding devotion, as citizens, to your  
19 important work as jurors.

20 May you, acting in accordance with the evidence  
21 and the law, by your verdict, declare the truth and  
22 proclaim the cause of righteousness and justice.

23 If you desire to examine any of the exhibits,  
24 they will be delivered to you upon request, and if after  
25 you have retired, you desire to be informed on a point

1  
2 of law arising in the case, or to have any part of  
3 the testimony clarified, you should ask to be returned  
4 to the Court for further instructions.

5 At this point, we will take a five minute  
6 recess in order that I may hear applications to be  
7 made by counsel. I request you not to consider this  
8 case until you are brought back at the end of this  
9 short recess.

10 Please do not discuss the case at the present  
11 time.

12 (Whereupon, the jurors were excused from the  
13 courtroom).

14 THE COURT: Any applications?

15 MR. GUTMAN: No.

16 THE COURT: How about you, Mr. Watson, any  
17 application?

18 MR. WATSON: No, your Honor.

19 THE COURT: All right, call the jury back.

20 (Whereupon the jury reentered the courtroom  
21 and were seated in the jury box.)

22 THE COURT: Well, ladies and gentlemen, that  
23 was a short recess. You may proceed to consider this  
24 case and I will be here for any requests you wish to  
25 make.



Certificate of Service

~~20~~ Dec<sup>2</sup>, 1974

I certify that a copy of this brief and appendix has been mailed to the United States Attorney for the Eastern District of New York.

Phyllis Akers Beerman

1  
2 UNITED STATES DISTRICT COURT

3 EASTERN DISTRICT OF NEW YORK

4 -----X

5 UNITED STATES OF AMERICA

6 -against-

Criminal Folder #

7 JOHN DOE

8 -----X

9  
10 225 Cadman Plaza East  
11 Brooklyn, New York

12 December 19, 1972

13  
14 GRAND JURY MINUTES

15  
16 Presented by:

17 HARRY C. BATCHELDER, JR., ESQ.  
18 Special Trial Attorney  
19 Department of Justice

20 Reported by:

21 Elizabeth A. Ng

22  
23 Witness:

24 ADRIAN CUEVAS  
25



1  
2 E L E N A M A R I A C A R D E N A S, a  
3 spanish interpreter was sworn to translate from  
4 English to Spanish and Spanish to English the  
5 questions and answers put to her if necessary.

6 A D R I A N C U E V A S, after being sworn,  
7 assumed his seat as a witness and testified as  
8 follows:

9 EXAMINATION BY

10 MR. BATCHELDER:

11 MR. BATCHELDER: Madam Forelady,  
12 do we have a quorum here?

13 THE FORELADY: Yes and there are  
14 no strangers present.

15 Q Mr. Cuevas, my name is Harry Batchelder  
16 and I'm a Special Trial Attorney with the United States  
17 Department of Justice and I believe last week I gave  
18 you a motion and an order for a grant of immunity.

19 A Yes.

20 Q Did you receive this?

21 A What I will do is, I want her to stand next to  
22 me if I have difficulty to answer any questions, then I  
23 use her.

24 Q Excellent.

25 Did you discuss this grant of immunity with

1  
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24  
25

your attorney?

A Yes, I did.

Q Do you know that you must answer all questions truthfully to the best of your ability?

A I will.

Q Do you know that if you give answers that it can in no way be used against you in another proceeding, do you understand that?

A I understand.

Q You are immune from all possible criminal prosecution except perjury.

Do you understand that?

A I understand.

Q Perjury is to tell a lie, you are deliberately lying, then the immunity does not insulate you from perjury.

Do you understand that?

A I understand.

Q Now, Mr. Cuevas, where are you presently incarcerated?

A What's that?

Q Where are you presently incarcerated?

A I am in Sing Sing Correctional Facility.

Q When were you sentenced to Sing Sing



Correctional Facility?

A April 17th?

Q Of this year?

A Of this year.

Q What was the crime you were charged with at that time?

A Narcotics.

Q What was the narcotics that you were charged with?

A (No response.)

Q Was it a sale, possess or what?

A Possession.

Q How much did you supposedly possess under that charge?

A I don't know much about that. I really don't.

Q Did you possess a kilo, an eighth or a quarter or what?

A Really, I am not familiar with the amount.

Q Were you working with somebody else or was it just you, the sole defendant?

A I was working with nobody else.

Q You were just the sole defendant, is that right?

A Yes, I was.

1  
2 Q You were the single defendant charged?

3 A Single defendant, yes.

4 Q Charged under that indictment?

5 A Yes.

6 Q Did you tell me what that drug was that  
7 you were charged with possessing?

8 A What it was?

9 Q Yes, cocaine?

10 A Cocaine, that's what they said.

11 Q Did you plead guilty to that charge?

12 A I did plead guilty, yes.

13 Q You pleaded guilty to that charge?

14 A Yes.

15 Q Now, where are you from, Mr. Cuevas?

16 A ~~Puerto Rico.~~

17 Q What is your age, sir, please?

18 A I was born 3/28/29.

19 Q ~~Where in Puerto Rico were you born?~~

20 A Utuado.

21 Q Correct.

22 A No. Utua

23 Q There's a large cigar manufacturing

24 plant in Utua

25 A I haven't been there for a long time.



1

2

Q Are you married, Mr. Cuevas?

3

A I am married.

4

Q How many children do you have?

5

A Three kids.

6

Q Where does your wife currently reside?

7

A What's that?

8

Q Where does your wife currently reside?

9

A In the Bronx. You want the address?

10

Q Yes, please.

11

A 140-27 Casal Place (phonetic).

12

Q At the time of your arrest, were you

13

employed, Mr. Cuevas?

14

A Yes.

15

Q Where were you employed

16

A I was employed in La Colina Inn Restaurant

17

Incorporated.

18

Q And the LaColina is located where?

19

A 3049 Third Avenue.

20

Q Is that spelled L-a C-o-l-i-n-a?

21

A L-a Co-l-i-n-a.

22

Q Bar and Restaurant?

23

A No. Lounge, Inn and Lounge and Restaurant.

24

Q How long had you worked there, Mr. Cuevas?

25

A Since 1967.

\*

Q When did you first come to this country?

A Came 1949.

Q Did you go to school in this country?

A No, I didn't go to school.

Q Where did you work prior to the LaColina?

A I worked in 1952 when I came here, in 1949.

I worked for -- as a carpenter work. 285 Mott Street.

Q Down in Chinatown?

A Right.

Q Down in Little Italy, up further into Little Italy?

A I don't know. Been a long time and then from there I worked in a factory that make nylon net, material of woman dressing material and that name was Coco Dye and Finishing. That's on Third Avenue, between 166th and 167th Street, that time was called Coco Dye and Finishing.

Q Did you have an interest in the LaColina; did you own it?

A Let me finish. In 1952 I worked for the post office department. I worked there since 1952 until 1967 as a clerk. Then from 1967 I went to work in the La Colina Restaurant.

Q Did you have an interest in the LaColina?



1  
2 Did you own part of it?

3 A I do.

4 Q How much did you pay for your interest in  
5 the restaurant?

6 A How much I pay?

7 Q Yes.

8 A Well, it was about three persons, started  
9 \$18,000. I put about \$5,000. It was three guys, three  
10 persons in the corporation.

11 Q Who were the other people in the corporation?

12 A My wife, Sylvia.

13 Q And who else?

14 A Fred Walter.

15 Q How much did your wife Sylvia put into  
16 the company?

17 A Equal shares.

18 Q She put in six?

19 A Six, six and six.

20 Q Who was Fred Walter?

21 A It's a stockholder in the corporation.

22 Q Where does he live?

23 A I don't know. He live in Malverne, Long Island.  
24 I don't know Coolidge Street.

25 Q Do you know the number?

1  
2 A I don't know how to spell it. Sounds like  
3 Coolidge Street but something like that. I don't have  
4 the -- I have the address someplace at home, you know, but  
5 I don't know. I can't recall it now.

6 Q Let me ask you, where did you meet Mr.  
7 Walter?

8 A I meet him on work. My wife used to work for  
9 the Naval Research Office on 7th Avenue and 23rd  
10 Street and I went there once to visit my wife on  
11 her job , you know and Fred Walter was my wife's boss  
12 at that time and that's how I met Mr. Walter.

13 Q How much money did you estimate you made  
14 in the restaurant in 1967? Did you make a profit on the  
15 restaurant in 1967?

16 A No. That's no -- I wasn't making any profit.

17 Q In 1968 did you make a profit?

18 A I have to check.

19 Q What do you think? Did you win, lose or  
20 draw?

21 A I have making a little profit.

22 Q When you say a little profit, about how  
23 much?

24 A Fifteen thousand dollars a year.

25 Q \$15,000 a year?



1  
2 A No, thousand dollars I wasn't making much.

3 Q How much were you making? Did you ever  
4 get your \$6,000 back?

5 A I cannot answer that because I have to check  
6 with my accountant, you know, my accountant has  
7 all the figures.

8 Q And the name of your accountant?

9 A It was -- what's that guy's name? I forgot.  
10 I can't remember right now. Later on.

11 Q You sure?

12 A I am pretty sure I know.

13 Q Did you ever get your \$6,000 back?

14 A Oh, his name was Angelo Rivera.

15 Q Do you know where Mr. Rivera is located?

16 A On Westchester Avenue but I don't know the  
17 address.

18 Q Westchester?

19 A Yes.

20 Q And that's in the Bronx?

21 A Yes, before Westchester Square. Before you reach  
22 Westchester Square.

23 Q Mr. Cuevas, did you make a profit on the  
24 restaurant in 1969?

25 A See, all those questions I have to check with my

1  
2 accountant.

3 Q I just asked to the best of your recollection,  
4 did you make a profit in the restaurant?

5 A I was making my living out of it.

6 Q How much was your living a week?

7 A Well, between rents, three kids, you know,  
8 I mean, you know, insurance and things about \$300.

9 Q About \$300 a week?

10 A Yes.

11 Q Did you ever give any money to Mr.  
12 Walter out of the restaurant or anything? Did he ever  
13 take any money out of the restaurant?

14 A No. He did not.

15 Q Did he ever get any money back for his  
16 \$6,000?

17 A No.

18 Q He did not?

19 A No.

20 Q Is he still a partner in it?

21 A He is still a partner.

22 Q And he has no income from the restaurant  
23 or nothing?

24 A No.

25 Q You have not paid him anything?



1  
2 A No.

3 Q Has he ever asked you for payment?

4 A No, he never asked me.

5 Q He gave you \$6,000 for five years and he  
6 says "Hey, I don't want no interest. I don't want no  
7 nothing."?

8 A Well, he didn't ask me.

9 Q He's not since 1967 when he put the \$6,000  
10 in say how's business these days?

11 A Since 1969, you know, then and then he concern  
12 his job, you know what I mean?

13 Q I would be concerned with his \$6,000  
14 myself as well as my job.

15 A He don't bother me to ask me for any profit or  
16 anything.

17 Q And you don't give him any money?

18 A No.

19 Q Do you think you ought to pay him some  
20 money or something?

21 A Waiting for him to ask me, you know.

22 Q He some businessman, Mr. Cuevas, isn't he?

23 A No. Wait for him to ask me what's going on, what's  
24 happening, then I give him details on the business.

25 Q Now, is the restaurant still being run at

1  
2 this time by your wife and Mr. Walter?

3 A Yes, it's running.

4 Q He's running it?

5 A My wife run it.

6 Q Your wife is running it?

7 A Yes.

8 Q Is Mr. Walter still a partner at this time?

9 A Still a partner.

10 Q Now, did you ever file income tax on  
11 that business?

12 A Yes.

13 Q Did you ever file income tax also?

14 A Who?

15 Q Did you file income tax?

16 A Yes.

17 Q Wach year?

18 A Individually, yes, as employee.

19 Q And you also filed a business income tax?

20 A Yes, the accountant handled all that.

21 Q And the accountant, Mr. Rivera has handled  
22 that?

23 A Yes.

24 Q Let me ask you, since the five years that  
25 you have worked at the restaurant, have you ever left the



country?

A In the five years?

Q Yes, in the last five years, have you ever left the continental United States?

A Yes.

Q How many times?

A About three times.

Q Where did you go?

A Puerto Rico.

Q All to Puerto Rico?

A Each time, yes.

Q What was the purpose of your trips going to Puerto Rico?

A My purpose of my trip to Puerto Rico, me and my wife have a little misunderstanding and she wanted to get a divorce from me and that's why you know, I went took those three, four trips to Puerto Rico.

Q It was to get a divorce?

A Yes. I managed to handle it so we back together. Thank God.

Q Who did you visit down there in Puerto Rico?

A (No response.)

Q Did you ever go to South America?

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A No.

Q Who did you visit in Puerto Rico that you  
can remember?

A Puerto Rico is -- I visit it -- I visit a friend  
of mine.

Q And his name?

A His name is Domingo Torres. Nick name we call  
him Dominicks.

Q Where does Dominicks live? San Juan?

A San Juan, yes, but I don't recall the address  
exactly.

Q You don't recall the address?

A No.

Q How many times have you stayed with  
Dominicks in San Juan?

A Only one time.

Q Who did you visit on the other two  
occasions, anybody else?

A No.

Q You just went to San Juan? Did you stay  
in San Juan all the time?

A Yes.

Q And you met nobody else that you knew?

A No.



1

2 Q How long did you stay?

2

3

A I stayed about five days, I stayed.

4

Q About five days each time?

5

A Yes.

6

Q When were --

7

A Not each time, you know, five days the first  
8 time and then one trip I make it two days and the other  
9 trip --

10

Q Just down and back? Where did you go

11

down and --

12

A We have a lot of trouble, me and my wife. She  
13 went try and you know, Friday, and you know, and fly  
14 back, you know, because you know, we have a lot of  
15 domestic problems at that time.

16

Q So you tried to solve your domestic  
17 problems on the airline?

18

A No, not on airline. We tried to be after her  
19 to convince her not to divorce me, you know.

20

Q You did that on an airliner? I'll have  
21 to try that.

22

A You know.

23

Q I'll have to try that. Maybe I won't try  
24 it. That's a better idea.

25

Now, did you ever negotiate for the sale

1  
2 of cocaine at any time when you were working at the  
3 LaColina?

4 A No.

5 Q Wait a minute.

6 Mr. Cuevas, I want you to think about  
7 this very carefully, all right?

8 I'm trying to protect you as much as  
9 I am anybody else.

10 Mr. Cuevas, the immunity only protects  
11 you with respect to everything but perjury. Perjury  
12 is if you tell a lie.

13 Now, think back. You were working at the  
14 LaColina this year, were you not?

15 A I was in jail.

16 Q In March of this year were you working?  
17 You weren't in jail until September, were you?

18 A Oh, I was in jail. I went to jail in April.

19 Q In April?

20 A Yes.

21 Q At any time this year, in January, February  
22 or March of 1972, did you ever negotiate with anybody  
23 for the sale of an eighth of a kilogram of cocaine?

24 A No.

25 Q You sure of that?



1  
2 A I sure of that, positive.

3 Q You are very sure of that?

4 A Yes.

5 Q Did you ever have any negotiations whatsoever  
6 with respect to -- with anybody concerning the sale  
7 of an eighth of a kilo of cocaine?

8 A No.

9 Q At any time in January, February or March  
10 of this year?

11 A No.

12 Q Is the LaColina at 3049 Third Avenue?

13 A 3049 Third Avenue.

14 Q In the Bronx?

15 A Yes.

16 Q Did anybody ever say to you in the LaColina  
17 Bar in March of this year that they were interested  
18 in purchasing an eighth of a kilo of cocaine from you?

19 A No.

20 Q Did you ever say to anybody that you could  
21 sell them an eighth of a kilo of cocaine in March of  
22 this year for \$1800 and it would take a three cut?

23 A No.

24 Q Would you speak up?

25 A No. I don't understand.

\*

1  
2 Q When you say you don't understand, let  
3 me ask you:

4 MR. BATCHELDER: Would you please  
5 translate that question which I asked?

6 (Whereupon, the last question was  
7 read back by the reporter.)

8 THE WITNESS: No. I never said  
9 that.

10 Q Did you ever say to anybody in March of  
11 this year on March 22, 1972 that you would sell them  
12 or could get an eighth of a kilo of cocaine for \$2000?

13 A No, I didn't.

14 Q Did you ever bargain with anybody about  
15 the price of the eighth of a kilo of cocaine from \$2,000  
16 to \$1,800 on March --

17 A I didn't bargain with anybody.

18 Q Did you ever give anybody any cocaine  
19 in the mens room of the LaColina Bar on the evening  
20 of March 22, 1972?

21 A I never deal with cocaine in my life so I  
22 don't deal with cocaine.

23 Q So you don't deal with cocaine?

24 A No.

25 Q You never negotiated with anybody for the



1  
2 sale of cocaine in March of this year?

3 A No.

4 Q You are sure you never gave anybody a  
5 sample of cocaine in a folded one dollar bill in the  
6 mens room of the LaColina?

7 A No.

8 Q Did you ever say to anybody on the evening  
9 of March 22, 1972 that for \$1,800 they could have an  
10 eighth of a kilo of flake cocaine?

11 A No.

12 Q Did you ever --

13 A It was one guy one time he came to me. He asked  
14 me if I sell cocaine. I told him no. You know, at  
15 that time, you know.

16 Q Did you ever?

17 A That's what I told him.

18 Q Did you ever negotiate with anybody for  
19 the sale of rock cocaine on March --

20 A I don't even know what that is, rock.

21 Q You have no idea what rock cocaine is?

22 A No.

23 Q Can you tell me what the number 993-9763 is?

24 A 993?

25 Q Yes, 9763.

A 993?

1  
2 Q 993-9763. Is that the telephone number  
3 at the LaColina?

4 A Yes, LaColina telephone. Yes.

5 Q Now, is it your testimony that you never  
6 dealt with cocaine in any way or that you never handed  
7 anybody any cocaine, is that right?

8 A No.

9 Q Now, in February of this year, did you  
10 ever meet with anybody in the LaColina Bar and have  
11 any negotiations concerning the sale of cocaine?

12 A No.

13 Q Now, on February 24th the late evening  
14 of that day of 1972, did you ever have any discussions  
15 with anybody at which time you stated that the cocaine  
16 you had at that time was not very good and it wouldn't  
17 take a half cut but that you would sell it anyways?

18 Did you tell that to anybody?

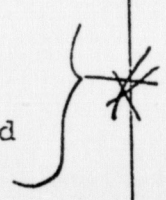
19 A No.

20 Q Did you have any negotiations or discussions  
21 at all?

22 A No.

23 Q In February of 1972 concerning --

24 A That particular person that I don't know, you  
25 know. He came over to purchase cocaine from me. I told





1  
2 him I don't sell cocaine.

3 Q You told him you don't sell cocaine?

4 A Yes.

5 Q Did you ever in February of this year state  
6 to anyone in February 24th to be exact, in the LaColina  
7 that you would sell them cocaine at \$500 an ounce?

8 A No.

9 Q Did you ever tell someone on February  
10 25th or 24th of 1972 in the LaColina Bar on the evening  
11 of that night that he should come around and talk to  
12 you if you wanted to get some good cocaine in about a  
13 week's time? }

14 A No. I didn't say that.

15 Q Mr. Cuevas, I want you to tell us  
16 everything that you know about Tiofello Rivera (phonetic).

17 A Tio?

18 Q Tio. Tio.

19 A Oh, you mean --

20 Q I mean.

21 A Tiofello?

22 Q Yes.

23 A I don't know.

24 Q You don't know any Tio?

25 A I know Tio.

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Q Tell me about him. Where you met him,  
when you met him.

A I met him in the LaColina.

Q When did you meet him in the LaColina?

A Figure about I know him for three, four years.

Q About how many years, three or four  
years?

A Two, three years.

Q Did you ever have any narcotics dealing  
with tio?

A No.

Q Did you ever know that Tio was supposedly,  
allegedly dealing cocaine?

A I don't ask him about his business.

Q The question I asked you was did you  
know of your own knowledge whether he was ever dealing  
in cocaine?

A No.

Q Did you ever see him with any cocaine?

A No.

Q How often would you say Tio came into  
the LaColina?

A Very often.

Q Very often?



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A Yes.

Q Was he always once or twice a week or three times a week?

A Almost every day.

Q What was Tio's business? Can you tell me?

A Tio's business, you know, I rent him a place.

Q Where did you rent him a place?

A Right on top of the Colina.

Q What was his business? What was he doing?

A I don't know. You know, business there, you know.

Q You didn't know?

A No.

Q Do you know a guy four years and you don't know his business, right?

A Well, he has an after hour.

Q Up above? What was he selling liquor or whatever else goes in the afterhour?

A I rent to him before I went to prison, you know. I don't know what he was doing. I was in prison.

Q Has he come to see you in prison at all?

A No.

Q Is he still renting the place?

A Still paying the rent.

1  
2 Q How much is the rent?

3 A He pays \$125.

4 Q Let me ask you. I will take you back  
5 again to February. February 24, 1972, did you ever  
6 say to anybody on that evening that you could supply  
7 all the cocaine this individual wanted but that the  
8 cocaine you had at that time was not very good and  
9 it would only take a half cut?

10 A I did not say a thing like that.

11 Q Did you ever say to anybody on the  
12 evening of February 24th that the price of the bad  
13 cocaine was the same as the price of the good cocaine?

14 A I did not.

15 Q Are you sure of that?

16 A Sure.

17 Q Now, in March 22nd of this year, in the  
18 LaColina, in the early evening of that day, about 6:15,  
19 did you ever say to anybody that the price of an eighth  
20 of a kilo of cocaine which would take a three cut  
21 would be \$2,000? Did you ever say that?

22 A I did not.

23 Q Did you ever on the evening of March 22,  
24 1972 go into the mens room or the LaColina and give  
25 somebody any cocaine in a dollar bill?



1  
2 A No.

3 Q Did you ever give anybody on the  
4 evening of March 22nd a slip of white paper with  
5 the number of the bar on it and tell him to call back  
6 and you would see whether you could get the eight of  
7 a kilo?

8 A No.

9 Q Is it your testimony that you have never  
10 given anybody even a small amount of cocaine?

11 A No.

12 Q Is it your testimony that you never gave  
13 to anybody on the evening of March 22, 1972 a small  
14 amount of cocaine wrapped in a dollar bill?

15 A No.

16 MR. BATCHELDER: I haveno further  
17 questions.

18 Does anybody have any further  
19 questions?

20 JUROR: Were you ever a user?

21 THE WITNESS: No.

22 JUROR: You had the cocaine on you  
23 when youwere picked up before you were  
24 arrested?

25 THE WITNESS: No, I didn'thave no

cocaine.

BY MR. BATCHELDER:

Q What were you busted for? Was it cocaine or was it heroin?

A Cocaine.

JUROR: You must have had it on you?

THE WITNESS: I don't have it on me.

Q Where was it found?

A It was found in the basement.

Q Of what place?

A On 3049 Third Avenue, in the basement.

Q Which is the LaColina Bar?

A LaColina Bar.

Q How much cocaine was found there?

A I don't know.

Q Kilo?

A No. I don't know. The court has -- they said that they found it.

JUROR: You are the only one that was there?

THE WITNESS: Who?

JUROR: In the --

THE WITNESS: I wasn't even in the place when that happened.



JUROR: What did you plead guilty for?

THE WITNESS: Because they found it on my premises and they scare me. They said that carry seventeen to fifteen years and in order to get out of there in that mess, I have to plead guilty.

JUROR: They advised you that way?

THE WITNESS: They advised me that, yes.

BY MR. BATCHELDER:

Q Just one second.

Mr. Cuevas, is it not true that you brought this point up on your appeal and your appeal has been denied? Is that right?

A No. I had to consult my lawyer about that. My lawyer brought me some papers. He mentioned about appeal but he didn't mention about the other thing.

MR. BATCHELDER: I have no further questions.

THE FORELADY: You are excused.

(Whereupon, the witness was excused and withdrew.)